

1 Under Rule 4(m) of the Federal Rules of Civil Procedure, the
2 Court may dismiss an action without prejudice if the summons and
3 complaint are not served on the defendant within 120 days after filing
4 the complaint or within the time specified by the Court. Efaw v.
5 Williams, 473 F.3d 1038, 1041 (9th Cir. 2007). Rule 4(m) requires a
6 court to extend the time for service if a plaintiff shows good cause
7 for the failure to serve. "At a minimum, 'good cause' means excusable
8 neglect." Bourdette v. Barnette, 923 F.2d 754, 756 (9th Cir. 1991).
9 Here, Plaintiffs have not shown good cause for their failure to effect
10 timely service on the Defendant.

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12 A court has "broad discretion" to extend the time for service
13 under Rule 4(m), even absent a showing of good cause. See Efaw v.
14 Williams, 473 F.3d at 1040-41; see also United States v. 2,164
15 Watches, More or Less, Bearing a Registered Trademark of Guess?, Inc.,
16 366 F.3d 767, 773 (9th Cir. 2004) (Rule 4(m) gives courts "leeway to
17 preserve meritorious lawsuits despite untimely service of process").
18 A court may consider various factors including prejudice to the
19 defendant, actual notice, a possible limitations bar, and eventual
20 service. Efaw v. Williams, 473 F.3d at 1041. Any such dismissal
21 should be without prejudice. See id. at 772. In the present case,
22 Plaintiffs' failure to comply with the Minute Order renders an
23 evaluation of these factors somewhat speculative. There is no
24 evidence that Defendant has actual notice of this action. The
25 possible prejudice to the Defendant resulting from the delay is
26 unknown, as is the impact of dismissal on a possible future
27 limitations bar. There is no indication when, if ever, Plaintiffs
28 eventually would effect service.

1 Service of the Summons and Complaint by the United States
2 Marshals Service is not an appropriate option in the present case.
3 The Court generally will order Marshals' service when a plaintiff, in
4 forma pauperis, files a complaint that is not dismissed sua sponte
5 under 28 U.S.C. § 1915(e)(2)(B). See Fed. R. Civ. P. 4(c)(3).
6 Plaintiffs are not in forma pauperis. Rule 4(c)(3) grants the Court
7 discretion to order Marshals' service of a non-IFP complaint "in
8 certain limited circumstances as when a hostile defendant threatens
9 injury to the process server." Wright and Miller, Federal Practice
10 and Procedure, § 1090, p. 476 (3rd ed. 2002). Plaintiffs have not
11 made any such showing.

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13 In addition to dismissing this action for failure to effect
14 timely service, the Court may dismiss this action for failure to
15 prosecute. Neither Plaintiff filed a timely response, despite a Court
16 Order that Plaintiffs do so. The Court has inherent power to achieve
17 the orderly and expeditious disposition of cases by dismissing actions
18 for failure to prosecute. See Link v. Wabash R.R., 370 U.S. 626, 629-
19 30 (1962).

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21 For all of the foregoing reasons, it is ordered that this action
22 is dismissed without prejudice.

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24 LET JUDGMENT BE ENTERED ACCORDINGLY.

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26 DATED: 5/13, 2013.

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28 
UNITED STATES DISTRICT JUDGE